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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,728	12/20/2001	Dominic Fulginiti	042390.P13349	9784

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Christian A. Nicholes
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025-1026

EXAMINER

ROCHE, TRENTON J

ART UNIT	PAPER NUMBER
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2193

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/027,728	Applicant(s) FULGINITI ET AL.	
	Examiner Trenton J. Roche	Art Unit 2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office action is responsive to communications filed 31 March 2006.
2. Per Applicants' request, amended claims 12 and 13 have been entered. Claims 1-24 are currently pending.
3. Claims 1-24 have been examined.

Response to Arguments

4. Applicant's arguments filed 31 March 2006 have been fully considered but they are not persuasive.

Per claims 1-3, 5, 8-10, 12, 15, 16-18 and 22:

Applicants state that while Kozaki discloses selecting an operating system, and booting the selected operating system, Kozaki fails to teach or reasonably suggest installing the selected operating system as required by exemplary independent claim 1. In response, the Examiner notes that Kozaki discloses in col. 4 lines 64-67 that upon selection of an operating system, "flow proceeds...to boot up the source computer 11 using the requested version of the operating system *transmitted from the remote computer* (emphasis added)..." As such, Kozaki does not just disclose that the source computer is network booted, but rather discloses that a copy of the operating system is sent to the source computer for booting. As a software application cannot operate on a computing device without being installed in some fashion, the transmitted operating system disclosed by Kozaki must inherently be installed so that the source computer can boot from the operating system. Accordingly, Kozaki discloses the required limitations, and the rejection of claims 1-3, 5, 8-10, 12, 15, 16-18 and 22 is proper and maintained.

Per claims 4, 6, 7, 11, 13, 14, 19-21, 23 and 24:

Applicants do not present any additional arguments beyond those presented in relation to claims 1-3, 5, 8-10, 12, 15, 16-18 and 22, which have been addressed above. Accordingly, the rejection of claims 4, 6, 7, 11, 13, 14, 19-21, 23 and 24 is proper and maintained.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 5, 8-10, 12, 15, 16-18 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,828,888 to Kozaki et al. (hereinafter "Kozaki").

Per claim 1:

Kozaki discloses:

- receiving through a network an indication from a device ("the source computer...sends a request message..." in col. 4 lines 34-35)
- upon determining from the indication that the device is in a state in which a first system has not been installed on the device, instructing the device through the network to install the first system ("In response, a message M2 containing the list is sent from master computer 10 to source computer..." in col. 4 lines 17-19)

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- upon receiving through the network from the device an indication that the first system has been installed, indicating through a user interface that the device is in a state in which the device is available to install an operating system selectable through the user interface (The list of OS versions contained in the message M2 is displayed and one of the OS versions is selected by a user at the source computer...” in col. 4 lines 19-21)
- and upon a selection of the operating system, instructing the device through the network to install the operating system (“Computer 12 returns a network boot response message M5 by sending a copy of the requested operating system to the source computer...” in col. 4 lines 29-31)

substantially as claimed.

Per claims 2 and 3:

The rejection of claim 1 is incorporated, and further, Kozaki discloses indicating through the user interface that the device is in a state in which an operating system has been installed for the device as claimed (Note the rejection of claim 1. Booting into the new operating system would be a user-interface indication of the operating system being installed.)

Per claim 5:

Claim 5 is rejected under the same rationale set forth in connection with claim 1.

Per claims 8-10:

Claims 8-10 are directed to a machine-readable medium for performing the method of claims 1-3, respectively, and are rejected for the reasons set forth in connection with claims 1-3, respectively.

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Per claim 12:

Claim 12 is rejected under the same rationale set forth in connection with claim 1.

Per claim 15:

Claim 15 is rejected under the same rationale set forth in connection with claim 1.

Per claims 16-18:

Claims 16-18 are rejected under the same rationale set forth in connection with claims 2 and 3

Per claim 22:

Claim 22 is rejected under the same rationale set forth in connection with claim 1.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 6, 7, 11, 13, 14, 19-21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,828,888 to Kozaki et al. (hereinafter "Kozaki"), in view of U.S. Patent 6,256,668 to Slivka et al. (hereinafter "Slivka").

Per claims 4, 6, 11, 13, 19-21, 23 and 24:

Kozaki further discloses a system capable of a network boot process, wherein a user is capable of selecting an operating system for installation on the network computer. Subsequently, an operating system is installed on the computer. During the time, the computer would always be in a state in which the device is able to return to a state without an operating system, via either a re-formatting or an OS uninstallation. Furthermore, as was shown in regards to claim 1, Kozaki discloses installing a first system and installing an operating system through a user interface. However, Kozaki does not explicitly disclose receiving an indication to return the device to the state in which an operating system has not been selected for the device, and then repeating the installation steps of claim 1. Slivka discloses in an analogous operating system installation system the concept of receiving an indication through a user interface that a device is able to return to the state before selecting a new operating system (Note Figure 4B, items 90 and 98 and the corresponding sections of the disclosure). It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the indication ability of Slivka with the network OS installation system of Kozaki, as this would enable a user to receive indications if any further action is necessary as disclosed by Slivka (col. 8, lines 38-42), or complete the download at another time as taught by Slivka (col. 9, lines 8-42).

Per claim 7:

The rejection of claim 6 is incorporated, and further, Kozaki discloses sending through the network to the server an indication that the first system has been installed as claimed (Note Figure 4, item 100 and the corresponding sections of the disclosure. The computer must have a first “system”

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installed to send a message. A computer cannot send a message without a basic "system" to instruct the machine to act in some fashion.)

Per claim 14:

Note the rejection regarding claim 7.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trenton J. Roche whose telephone number is (571) 272-3733. The examiner can normally be reached on Monday - Friday, 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Trenton J Roche
Examiner
Art Unit 2193


TJR


WEI ZHEN
SUPERVISORY PATENT EXAMINER